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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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10 Attorneys for Jaclyn E. Adler
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Jaclyn E. Adler

the plaintiff,

v.

Legal Recovery Law Offices, Inc.,
 Mark D. Walsh, and Capital One
 Bank (USA) N.A.

Case Number: **10CV1778 BEN - BLM**

Complaint For Damages

Jury Trial Demanded

INTRODUCTION

1. Jaclyn E. Adler, (the plaintiff), through the plaintiff's attorneys, brings this
 2 action to challenge the actions of Legal Recovery Law Offices, Inc. (LRL),
 3 Mark D. Walsh (Walsh), and Capital One Bank (USA) N.A. (Capital One),
 4 (jointly, "the defendants"), with regard to attempts by the defendants to
 5 unlawfully and abusively collect a debt allegedly owed by the plaintiff, and
 6 this conduct caused the plaintiff damages.

HYDE & SWIGART
San Diego, California

ORIGINAL

2. The plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which the plaintiff alleges on personal knowledge.
3. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.
4. Unless otherwise stated, all the conduct engaged in by Legal Recovery Law Offices, Inc., Mark D. Walsh, and Capital One Bank (USA) N.A. took place in California.
5. Any violations by the defendants were knowing, willful, and intentional, and the defendants did not maintain procedures reasonably adapted to avoid any such violation.

JURISDICTION AND VENUE

6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
7. This action arises out of the defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").
8. Because the defendants do business within the State of California, personal jurisdiction is established.
9. Venue is proper pursuant to 28 U.S.C. § 1391.
10. At all times relevant, the defendants conducted business within the State of California.

PARTIES

11. The plaintiff is a natural person who resides in the City of Poway, State of California.
12. The defendants are located and do business in the State of California.

13. The plaintiff is obligated or allegedly obligated to pay a debt, and is a
14. “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
15. The defendants are persons who use an instrumentality of interstate
16. commerce or the mails in a business the principal purpose of which is the
17. collection of debts, or who regularly collect or attempt to collect, directly or
18. indirectly, debts owed or due or asserted to be owed or due another and are
19. therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
20. The plaintiff is a natural person from whom a debt collector sought to collect
21. a consumer debt which was due and owing or alleged to be due and owing
22. from the plaintiff, and is a “debtor” as that term is defined by California Civil
23. Code § 1788.2(h).
24. The defendants, in the ordinary course of business, regularly, on behalf of
25. themselves, or others, engage in debt collection as that term is defined by
26. California Civil Code § 1788.2(b), are therefore debt collectors as that term is
27. defined by California Civil Code § 1788.2(c).
28. This case involves money, property or their equivalent, due or owing or
29. alleged to be due or owing from a natural person by reason of a consumer
30. credit transaction. As such, this action arises out of a consumer debt and
31. “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

21 18. Sometime before March 29, 2010, the plaintiff is alleged to have incurred
22 certain financial obligations.

23 19. These financial obligations were primarily for personal, family or household
24 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
25 §1692a(5).

26 20. These alleged obligations were money, property, or their equivalent, which is
27 due or owing, or alleged to be due or owing, from a natural person to another
28 person and are therefore a “debt” as that term is defined by California Civil

1 Code §1788.2(d), and a “consumer debt” as that term is defined by California
2 Civil Code §1788.2(f).

3 21. Sometime thereafter, but before March 29, 2010, the plaintiff allegedly fell
4 behind in the payments allegedly owed on the alleged debt.

5 22. Subsequently, but before March 29, 2010, the alleged debt was assigned,
6 placed, or otherwise transferred to the defendants for collection.

7 23. In reality, as the defendants knew or should have known, the plaintiff never
8 incurred or had anything to do with this debt. In reality, as the defendants
9 knew or should have known, the debt that the defendants alleged was owed
10 by the plaintiff was incurred solely by the plaintiff’s father. However,
11 because the father declared bankruptcy, the defendants decided to see if they
12 could coerce payments from the daughter.

13 24. On or about March 29, 2010, the defendants wrote a letter to the plaintiff and
14 demanded payment of the alleged debt.

15 25. This communication to the plaintiff was a “communication” as that term is
16 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent
17 with 15 U.S.C. § 1692g(a).

18 26. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
19 defines that phrase, and an “initial communication” consistent with Cal. Civ.
20 Code § 1812.700(b).

21 27. Subsequently, on April 7, 2010, the plaintiff advised the defendant that she
22 disputed the debt pursuant to 15 U.S.C. § 1692g.

23 28. Subsequently, the plaintiff also advised the defendants that the plaintiff had
24 retained an attorney concerning the alleged debt, consistent with 15 U.S.C.
25 §1692c(a)(2).

26 29. On or about April 15, 2010, the attorney for the plaintiff advised the
27 defendants, in writing, that the plaintiff was represented by said attorney with
28 respect to any consumer debt. This writing included said attorney's name and

1 address and a request that all communications regarding any consumer debt
2 be addressed to said attorney, consistent with Cal. Civ. Code § 1788.14(c), 15
3 U.S.C. §1692c(a)(2), and Cal. Civ. Code § 1788.17.

4 30. Thereafter, the defendant again contacted the plaintiff in an attempt to collect
5 the alleged debt, thereby violating Cal. Civ. Code § 1788.14(c) and 15 U.S.C.
6 §1692c(a)(2). Because this letter violated the language in 15 U.S.C.
7 §1692c(a)(2), this letter also violated Cal. Civ. Code § 1788.17.

8 31. On or about July 1, 2010, the defendants filed a lawsuit against the plaintiff
9 for a debt the defendants knew only too well was not owed by the plaintiff
10 and was, instead, allegedly incurred by the plaintiff's father. The plaintiff
11 never applied or made any charges on the credit card in question.

12 32. Because the plaintiff notified the defendant in writing within the thirty-day
13 period described in subsection (a) of 15 U.S.C. § 1692g that the debt, or some
14 portion thereof, was disputed, the defendant had a duty to verify the alleged
15 debt with the plaintiff.

16 33. Because the defendant failed to verify the alleged debt with the plaintiff prior
17 to filing a lawsuit, the defendant violated 15 U.S.C. § 1692g and Cal. Civ.
18 Code § 1788.17.

19 34. In filing this lawsuit against the plaintiff, the defendants filed a state
20 complaint. This state complaint was a "communication" as that term is
21 defined by 15 U.S.C. § 1692a(2).

22 35. This state complaint was a "debt collection" as Cal. Civ. Code 1788.2(b)
23 defines that phrase.

24 36. By filing this lawsuit the defendants are attempting to take legal action they
25 are not legally entitled to take, in violation of 15 U.S.C. § 1692e(5) and Cal.
26 Civ. Code § 1788.17.

27 37. By filing this lawsuit, the defendant used a false, deceptive, or misleading
28 representation or means in connection with the collection of a debt.

1 Consequently, the defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §
2 1692e(10).

3 38. By filing this lawsuit, the defendant used an unfair or unconscionable means
4 to collect or attempt to collect any debt. Consequently, the defendant violated
5 15 U.S.C. § 1692f and 1692f(1).

6 39. Because this violated certain portions of the federal Fair Debt Collection
7 Practices Act as these portions are incorporated by reference in the Rosenthal
8 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
9 this conduct or omission violated Cal. Civ. Code § 1788.17.

10 40. In the defendants' state complaint, the defendants asked for a "contractual rate
11 of 19.80% [interest] from the date of breach." In reality, there was no
12 contract with the plaintiff, and the contractual rate that the defendant may
13 have had with the plaintiff's father did not include a contractual rate of
14 19.80%. This representation is a materially false characterization of the debt
15 because it distorts the amount of the debt allegedly owed, and, consequently,
16 violates 15 U.S.C. § 1692e, 1692e(10), 15 U.S.C. § 1692f, 1692f(1), and Cal.
17 Civ. Code § 1788.17.

18 41. Because this violated certain portions of the federal Fair Debt Collection
19 Practices Act as these portions are incorporated by reference in the Rosenthal
20 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
21 this conduct or omission violated Cal. Civ. Code § 1788.17.

HYDE & SWIGART
San Diego, California

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CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

5 42. The plaintiff repeats, re-alleges, and incorporates by reference, all other
6 paragraphs.

7 43. The foregoing acts and omissions constitute numerous and multiple violations
8 of the FDCPA, including but not limited to each and every one of the above-
9 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

10 44. As a result of each and every violation of the FDCPA, the plaintiff is entitled
11 to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages
12 in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
13 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
14 each and every defendant, jointly and severally.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

18 45. The plaintiff repeats, re-alleges, and incorporates by reference, all other
19 paragraphs.

20 46. The foregoing acts and omissions constitute numerous and multiple violations
21 of the Rosenthal Act, including but not limited to each and every one of the
22 above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

23 47. As a result of each and every violation of the Rosenthal Act, the plaintiff is
24 entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a);
25 statutory damages for a knowing or willful violation in the amount up to
26 \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's
27 fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every
28 defendant, jointly and severally.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays that judgment be entered against the defendant, and the plaintiff be awarded damages from the defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

Respectfully submitted,

Hyde & Swigart

Date: Aug 4, 2010

By:

~~Joshua B. Swigart~~

Attorneys for the plaintiff

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jaclyn E. Adler

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

Legal Recovery law Offices, Inc., Mark D. Walsh, and Capital One Bank (USA) N.A.

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys (If Known)

10CV1778 BEN

BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

| | | III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) | | | |
|---|--|---|----------------------------|---|---|
| | | PTF | DEF | PTF | DEF |
| Citizen of This State | | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|---|---|--|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> PERSONAL INJURY | <input type="checkbox"/> PERSONAL INJURY | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 420 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 440 Commerce |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 450 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 850 Securities/Commodities/ Exchange | <input type="checkbox"/> 460 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 470 Customer Challenge 12 USC 3410 |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 862 Black Lung (923) | <input checked="" type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 390 Other | <input type="checkbox"/> 863 DIWC/DIW (405(g)) | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 410 Other | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 892 Economic Stabilization Act |
| <input type="checkbox"/> 195 Contract Product Liability | | | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 196 Franchise | | | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 894 Energy Allocation Act |
| <input type="checkbox"/> REAL PROPERTY | <input type="checkbox"/> CIVIL RIGHTS | <input type="checkbox"/> PRISONER PETITIONS | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> Habeas Corpus: Accommodations | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/ Accommodations | <input type="checkbox"/> 530 General | <input type="checkbox"/> 790 Other Labor Litigation | |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 445 Amer. w/Disabilities- Employment | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> 800 SOCIAL SECURITY | |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 446 Amer. w/Disabilities- Other | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 861 HIA (1395ff) | |
| | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 862 Black Lung (923) | |
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| | | | <input type="checkbox"/> 790 Other Labor Litigation | |
| | | | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | |
| | | | <input type="checkbox"/> 800 SOCIAL SECURITY | |
| | | | <input type="checkbox"/> 861 HIA (1395ff) | |
| | | | <input type="checkbox"/> 862 Black Lung (923) | |
| | | | <input type="checkbox"/> 863 DIWC/DIW (405(g)) | |
| | | | <input type="checkbox"/> 864 SSID Title XVI | |
| | | | <input type="checkbox"/> 865 RSI (405(g)) | |
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Court Name: USDC California Southern
Division: 3
Receipt Number: CAS017333
Cashier ID: bhartman
Transaction Date: 08/25/2010
Payer Name: HYDE AND SWIGART

CIVIL FILING FEE

For: ADLER V LEGAL RECOVERY LAW OFF
Case/Party: D-CAS-3-10-CV-001778-001
Amount: \$350.00

CHECK

Check/Money Order Num: 4054
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.